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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,244

12/07/2004

Hiroyuki Morioka

112857-402

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29175 7590
K&L Gates LLP
P. O. BOX 1135
CHICAGO, IL 60690

03/17/2009

EXAMINER

WARTALOWICZ, PAUL A

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/517,244</p>	<p>Applicant(s) MORIOKA ET AL.</p>	
	<p>Examiner PAUL A. WARTALOWICZ</p>	<p>Art Unit 1793</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Steven Bos/
Primary Examiner, Art Unit 1793

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that there is support for the recitation "wherein the hydrogen occluding material excludes alkali metals." However, it appears that applicant is arguing the exclusion of an alkali dopant by pointing to portions of the specification that distinguish between NaAlH_4 and AlH_3 . This does not address AlH_3 doped with alkali that the instant claims are excluding. There is no guidance in applicant's specification for the exclusion of alkali dopants. Applicant argues Percharsky does not disclose a hydrogen occluding material which excludes alkali metals. However Percharsky teaches only transition metal dopants (col. 4, lines 42-52) which do not include alkali metals, ie. excludes alkali metals. Additionally Percharsky discloses both NaAlH_4 and AlH_3 . Percharsky teaches that the hydrogen occluding material is AlH_3 doped with a transition metal as required by the instant claim. It is noted that applicant appears to be arguing that applicant's invention lends support to excluding alkali dopants and that Percharsky does not exclude alkali dopants. However, there does not seem to be a perceptible difference between the disclosure of the invention and Percharsky regarding using NaAlH_4 or AlH_3 . That an agate mortar or ball mill is used to mix the dopant appears immaterial to the instant claims. Additionally, it appears that Percharsky is adding a substantially similar transition metal catalyst as the instant invention and that the catalyst would necessarily be present on the surface of the AlH_3 as a result of the agate mortar mixing in Percharsky. It is noted that it is not claimed that the dopant is present on the surface of the AlH_3 . Percharsky is relied upon for teaching AlH_3 (col. 4, lines 20-25). That Percharsky does not describe AlH_3 in the examples is not persuasive. A reference is applicable for all that it teaches and fairly suggests, not just preferred embodiments or examples. MPEP 2123. The difference in hydrogen release between the instant disclosure and the prior art is not persuasive because the hydrogen release in Percharsky is that of LiAlH_4 or NaAlH_4 and not that of AlH_3 .

Continuation of 13. Other: The rejection is maintained for the reasons set forth in the record.